Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. _____

(1)

In The
Supreme Court of the United States

RAYMOND JACKSON - PETITIONER

vs.

WILLIAM S. HALTER, COMMISSIONER OF
THE SOCIAL SECURITY ADMINISTRATION, ET AL,
RESPONDENTS

An Appeal From The United States Court of Appeals For The Ninth Circuit
Case No. 0016815

MOTIONS FOR LEAVE TO PROCEED ON PAPERS PREPARED AS REQUIRED BY SUPREME COURT RULE 33.2 (RULE 40.1)

ursuant to Supreme Court Rule 40.1, the petitioner ask leave of the Court to proceed as a
an, without payment of fees or the court costs, for the filing of the forth coming Petition for
t of Certiorari, which include suing to establish re-employment rights with United States
', on grounds set forth below:

· A declaration setting out the moving Party's veteran status:

arty's Veteran Status:

1. Veteran's c-number is C-20-783-486.

60 pp

2. Veteran is a 50 percent disabled United States Navy's veteran, since 1989.

3. Veteran's disabilities include: Bilateral Glaucoma, Bilateral defective vision, Diabetes mellitus and Dermatophytosis of the feet.

4. Pending Motion Requesting Reconsideration By The Board of Veterans Appeals To Determine whether The Veteran, Raymond Jackson, 423-92-1287, Entitlement To Individual Unemployability under 38 U.S.C. 501/38 CFR 4.16 (a) and (b), Total Disability Ratings for Compensation Based on Unemployability of the Individual (Service Connected Disabilities) and 38 U.S.C.S. 1157/38 U.S.C.S. 1114/38 U.S.C.S. 1115/38 CFR ch. 1 (7-1-99 Edition) 3.323 (b) (2), Service Connected and Non-service-Connected Disabilities, after or prior to the 6-7-91 and 7-24-96 Board of Veterans Appeals Decisions is established and whether the Denials are clear and unmistakable Errors (38 U.S.C.S. 711), DATED September 5, 2000.

b. Suing to Establish Reemployment Rights

1. Agency: United States Army

2. Date of the illegal and fraudulent Retirement:

March 31, 1988

3. Grade and position: GS-1515-12, Step 6, Operations Research Analyst

4. Social Security Number: 423-42-1287.

5. Illegal Retirement Authority Used:

5 U.S.C.A 8336 (c) (2) and (f), for FIRE FIGHTERS, LAW ENFORCEMENT AND PERSONNEL AGE 60, on March 31, 1988.

6. 5 U.S.C.A. 8336 (c)(2) and (f) RETIREMENT AUTHORITY is ILLEGAL, FRAUDULENT AND INVALID FOR ANY OPERATIONS RESEARCH ANALYST POSITION, on March 31, 1988.

LIST OF PARTIES

All parties do not appear in the caption of the Case on the Cover Page. A list of all parties to the proceedings in the Court whose judgment is the subject of this Petition is set as follows:

1. William S. Halter
   Commissioner of Social Security Administration.

2. Louis Caldera
   Secretary of the United States Army.

3. Janice R. Lachane
   Director, Office of Personnel Management (OPM) Agency and,

4. United States of America, USA.

CERTIFICATE OF SERVICE

This Certifies that required copies of the attached Petitioner's Motion for Leave To Proceed on Papers Prepared As Required By Supreme Court Rule 33.2 (Rule 40.1), as indicated below, was mailed postage prepaid next day delivery via UPS to persons listed below:

Persons	# of Copies	Address	Date Served
William K. Suter Clerk of the Court (202) 479-3011	11	Supreme Court of the United States 1 First Street, N.E. Washington, DC 20543	11-15-01
Theodore Bevry Olson Solicitor General of the United States (202) 514-2217	2	Room 5614 Department of Justice 950 Pennsylvania Ave., N.W. Washington, D.C. 20530-0001	11-15-01

I declare under the penalty of perjury of the laws of the United States of America, that the above is true and correct.

Raymond Jackson

Date: 11-15-01

Raymond Jackson
2980 Juniper Street
Fairfield, California 94533
(707) 422-3171

01-844
11-31-01

No. _____

In The

Supreme Court Of The United States

RAYMOND JACKSON,
PETITIONER

vs.

WILLIAM S. HALTER, COMMISSIONER
of the SOCIAL SECURITY ADMINISTRATION, ET AL,
RESPONDENTS

On Petition For A Whit of Certiorari To The United States Court of Appeals For The Ninth

PETITION FOR A WRIT OF CERTIORARI

RAYMOND JACKSON
2980 JUNIPER STREET
FAIRFIELD, CALIFORNIA 94533
(707) 422-3171

I.

QUESTIONS PRESENTED FOR REVIEW

(Rule 14.1 (a))

QUESTION I

a. Introductory Statement: On March 31, 1998, the United States Army (i.e. United States Army Aviation Systems Command Headquarters, St. Louis, Missouri) arbitrarily retired petitioner, GS-1515-12, Step 6, Operations Research Analyst, under the retirement authority for Firefighters and Law Enforcement Personnel and Personnel Age 60, 5 U.S.C.A. 8336 (c) (2) and (f) and OPM Authority 88-1. The United States Army and the Office of Personnel Management (OPM) Agency have arbitrarily not recalled petitioner or granted petitioner's reemployment rights. The non-availability of petitioner's reemployment rights adversely reduces petitioner's monthly Social Security retirement benefits (42 U.S.C. 405).

b. Question #1: Whether the United States Court of Appeals for the Ninth Circuit abused its discretion: (i) by the decision (i.e. exhibit A) to not review the United States District Court for the Eastern District of California's decision (i.e., exhibit B) to not review the United State's Army's or the Office of Personnel Management (OPM) Agency's decision to arbitrarily not grant petitioner's reemployment rights and (ii) if so, whether the United States Court of Appeals for the Ninth Circuit's decision (i.e., exhibit A) infringed upon petitioner's 1st Amendment constitutional right (i.e., the right to petition the Government for a redress of grievance, see Appendix F) and 5th Amendment Constitutional right (i.e., the right to not be deprived of life, liberty, or property with due process of law. See Appendix G).

QUESTION II

a. Introductory Statement: On November 18, 1999, the petitioner sued the Social

Security Administration in United States District Court of the Eastern District of California, under authority of 42 U.S.C.A 405 (g), for underpayment of petitioner's Monthly Social Security Retirement Benefits by more than $800.00 (42 U.S.C.A 404 (a) (1) (b)0, since March 1, 1996. Additionally, the Social Security Administration, arbitrarily refused to release 209 pages of prepaid ($35.23) petitioner's Individual Social Security Records to the petitioner on February 15, 2000, as required by 42 U.S.C. 405 (g), sentence #2.

b. Question #2: Whether the United States Court of Appeals for the Ninth Circuit abused its discretion: (i) by its decision (exhibit A) to not review the United States District Court For The Eastern District of California's decision (i.e., exhibit B) to arbitrarily not review the Social Security Administration's decision to arbitrarily underpay petitioner's Monthly Social Security Retirement Benefits (42 U.S.C. 405) and Social Security Administration's decision to not release 209 pages of petitioner's Individual Social Security Records and (ii) if so, whether United States Court of Appeals For The Ninth Circuit's decision (exhibit A) infringed upon petitioner's 1st Amendment constitutional right (i.e., the right to petition the Government for a redress of grievance, see Appendix F) and 5th Amendment Constitutional right (i.e., the right to not be deprived of life, liberty, or property with due process of law. See Appendix G).

QUESTION III

a. Introductory Statement: The petitioner's complaint against the four (4) federal parties – i.e., Commissioner of the Social Security Administration, Secretary of the United States Army, Director of the Office of Personnel Management (OPM) Agency, and the United States of America, is multiple claims and multiple parties. Judgment is statutorily required as set forth at Rule 54 (b) Federal Rules of Procedure (see Appendix H). United States District Court for the

Eastern District of California's decision (exhibit B) dismissed only one (1) federal party – i.e. Commissioner of the Social Security Administration and did not adjudicate all the claims, rights and liabilities of Petitioner, Commissioner of Social Security Administration, Director of the Office of Personnel Management (OPM) Agency, the Secretary of the United States Army and United States of America.

b. Question #3: Whether the United States Court of Appeals for the Ninth Circuit abused its discretion: (i) by its decision to (Exhibit A) to not review the United States District Court for the Eastern District of California's decision (Exhibit B) to not adjudicate all the claims, rights, and liabilities of all parties, including Petitioner, Commissioner of Social Security Administration, Director of the Office of Personnel Management (OPM) Agency, the Secretary of the United States Army and United States of America, as statutorily required by Federal Rules of Civil Procedure 54 (b), 28 U.S.C.A. and (ii) if so, whether the United States of Appeals for the Ninth Circuit's decision (i.e., Exhibit A) to not review the United States District Court for the Eastern District of California's decision (Exhibit B) to not adjudicate all the claims, rights, and liabilities of all parties to this case infringed upon Petitioner's 1st Amendment Constitutional right (i.e., the right to petition the Government for a redress for grievances. See Appendix F) and 5th Amendment Constitutional right (i.e., the right to not be deprived of life, liberty, or property, without due process of law. See Appendix G).

II.
LIST OF PARTIES
(Rule 14.1 (b))

All Parties do not appear in the caption of the case on the Cover Page. A list of all parties to the proceedings in the Court whose judgment is subject of this petition is provided below:

1. William S. Halter
   Commissioner of the Social Security Administration

2. Louis Caldera
   Secretary of the United States Army

3. Kay Coles Rames
   Director of the Office of Personnel Management (OPM) Agency

4. United States of America, USA/

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Constitution of the United States

Amendment [I.]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Appendix F

Constitution of the United States

Amendment [V.]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in Actual Service of War or public danger; nor shall any person be subject for the same offence to be twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, not be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

OPINIONS BELOW

(Rule 14.1 (d))

For cases from federal courts:

The opinion of the United States Court of Appeals for the Ninth Circuit appears at Appendix A to the petition and is unpublished.

The opinion of the United States District Court for the Eastern District of California appears at Appendix B to the petition and is unpublished.

JURISDICTION

(Rule 14.1 (e))

For cases from federal courts:

The date on which the United States Court of Appeals for the Ninth Circuit decide my case was May 31, 2001.

A timely petition for rehearing was denied by the United States Court of Appeals for the Ninth Circuit on the following date: August 28, 2001, and a copy of the order denying rehearing at Appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

(Rule 14.1 (f))

I. Constitutional Provisions

a. 1st Amendment, Constitution of the United States: "The right to petition the Government for grievances" (see Appendix F).

b. 5th Amendment, Constitution of the United States: "The right to not be deprived of life, liberty, or property, without due process of law" (see Appendix G).

II. Statutory Provisions

A. Federal Rules of Civil Procedure, Rule 54 (b), 28 U.S.C.A. Judgment Upon Multiple Claims or Involving Multiple Parties: "When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties." (see Appendix H)

B. 42 U.S.C. 405 (g), sentence #2: "As part of the Commissioner's answer, the Commissioner of Social Security shall file a certified copy of the transcript of the record including the evidence upon which findings and decision complained of are based." (see Apendix J)

C. 5 U.S.C. 8336 (c) (2) and (f):

1. (c) (2): "An employee is entitled to an annuity if the employee –

a. "Was a law enforcement officer or firefighter employed by the Panama Canal Company or the Canal Zone Government at any time during the period beginning March 31, 1979, and ending September 30, 1979; and (b) is separated from the service before

January 1, 2000, after becoming 48 years of age and completing 18 years of service as a law enforcement officer or firefighter, or any combination of such service totaling at least 18 years."

2. (f): "An employee who is separated from the service after becoming 62 years of age and completing 5 years of service is entitled to an annuity." (see Appendix J).

D. 5 U.S.C. 551 (10) (B) and (G):

1. (10) "Sanctions" includes the whole or a part of an agency –

2. (B) Withholding relief.

3. (G) "Taking other compulsory or restrictive action." (see Appendix K)

E. 42 U.S.C. 404 (a) (1) (B): "Whenever the Commissioner of Social Security finds that more or less than the correct amount of payment has been made to any persons under this subchapter, proper adjustment or recovery shall be made under regulations prescribed by the Commissioner of Social Security, as follows:

(B) With respect to payment to a person of less than the correct amount, the Commissioner of Social Security shall make payment of the balance of the amount due such underpaid person, or, if such person dies before payments are completed or before negotiating one or more checks representing correct payments, disposition of the amount due shall be made in accordance with subsection (d) of this section" (see Appendix N).

III. Regulatory Provisions

A. 5 CFR 315.401 (a) Reinstatement – Agency Authority: "Subject to part 335 of this chapter and paragraph (b) of this section, an agency may appoint by reinstatement to a competitive service position under career – conditional appointment (or equivalent)" (see Appendix I).

B. 5 CFR 351.902. Correction by Agency: "When an agency decides that an action under this part was unjustified or unwarranted and restores an individual to the former grade or rate of pay held or to an intermediate grade or rate of pay, it shall make the restoration retroactively effective to the date of the improper action" (see Appendix Q).

C. 5 CFR 352.208 (a) Agency's obligation to Reemploy – Employee's right to reemployment: "An employee is entitled to be reemployed by the reemploying agency as promptly as possible but not more than 30 calendar days after receipt of his application" (see sentence #1, Appendix M).

(b) Reemployment in a higher grade: "The reemploying agency may reemploy the employee in a position of higher grade than that to which he is entitled, but not if this room reemployment would cause the displacement of another employee" (see Appendix M).

D. 5 CFR 352.706 Agency Response To Reemployment Application (a) Employee Right to Reemployment: "An employee is entitled to be employed by the re-employing agency as promptly as possible, and, in any event, within 45 calendar days after agency receipt of Application.

1. Within the competitive area the employee is entitled to reemployment in:

(i) The position held immediately before leaving Agency;

(ii) One on the same competitive level; or

(iii) Another position for which qualified and eligible at the same grade or level and in the same competitive area as the position the employee last held in the agency. The employing agency determines the position under paragraph a (1) (i), (ii) or (iii) of this section to which the employee is entitled. Reduction-in-force procedures shall be applied where necessary in determining the position to which the employee has a right. In applying the

Reduction-in-force regulations, the applicant shall be considered an employee of the Agency (see Apendix P).

STATEMENT OF THE CASE

(Rule 14.1(g))

I. Facts Material to Consideration of the three (3) questions presented for Review are set forth below (source: Appellant Principal Brief, U.S. Court of Appeals for the Ninth Circuit, filed 11-18-2000):

a. Facts Material To Question I.

f. Fact #6: On March 31, 1988, U. S. Army (i.e., Civilian Personnel Officer, U.S. Army Aviation Systems Command Headquarters, 4300 Goodfellow Boulevard, St. Louis, MO 63120-1798, illegally and fraudulently retired Raymond Jackson, Appellant, from his Operations Research Analyst, GS-1515-12, Step 6, $38,753 per year position in the Directorate for Systems and Cost Analysis, Data Analysis and Control Division (see Complaint Exhibit 3, docket entry 1, case # 99-CV-2285), under and in violation of statutory authority 5USC8336 (c) (2) and (f)) Immediate Retirement for law enforcement officers, firefighters, and employees age 62 years. (see Complaint exhibit 3, entry 1, docket 99-CV-2285). On March 31, 1988, Appellant was age 54 years, two (2) months, two (2) days and assigned to Civil Service Position Title: Operations Research Analyst, GS-1515-12, $38,753.00 per year, Step 6 , and Position No. 16549. (see Complaint, Exhibit 3, docket entry 1, case # 99-CV-2285). On March 31, 1988, Appellant was not assigned the civil service position of firefighter or law enforcement officer, nor was Appellant 62 years of age. The agency clearly exceeded its statutory authority. FACT #6 IS THE 4TH LEGAL BASIS THAT SUPPORTS MY BELIEF THAT U. S. DISTRICT COURT'S FINAL DECISION, Exhibit 1, is incorrect due to the Direct and Adverse impact on

Appellant's Social Security Retirement Benefits and Civil Service 5USC5596, backpay (see Plaintiff's Updated Settlement Offer, filed 06-26-98, docket entry number 62, Civil Docket for case # 97-CV-1223), U.S.A. army for an illegal (5USC8336 (c) (2) and (f)) and fraudulent (18USC1001) 03-31-88 retirement.

b. Facts Material to Question II

j. Fact #10: The U.S. District Court, Eastern District of California (Sacramento), Civil Docket for Case # 99-CV-2285, as September 26, 2000, 8:36 AM, clearly shows that the Commission of Social Security failed to comply with sentence #3 of 42 U.S. 405 (g) which states that "As part of the Commission's Answer, the Commissioner of Social Security shall filed a certified copy of the transcript of the record including the evidence upon which the findings and decision complained of are based.: The failure of the Commissioner of Social Security to comply with sentence #3 of 42 U.S. C 405 (g) constitutes a denial of due process of law, denial of right to exhaust administrative remedies, obstruction of justice, and denial of a 42USC405 (g) statutory right. Fact #10 is the 18th 7TH LEGAL BASIS THAT SUPPORTS MY BELIEF THAT U. S. DISTRICT COURT'S FINAL DECISION, exhibit 1, IS INCORRECT, DUE TO THE Adverse and Direct Impact on Appellant's Social Security Retirement Benefits and Civil Service 5USC5596 backpay (see Plaintiff's Updated Settlement Offer, filed 06-26-98, docket entry number 62, Civil Docket for case # 97-CV-1223) owed by OPM, U.S. Army and U. S. of America for an illegal (5USC8336 (c) (2) and (f) and fraudulent (18USC1001) 03-31-88 retirement.

l. Fact #12: U. S. District Court Eastern Division of California (Sacramento) Civil Docket for case # 99-CV-2285, docket entry number 8, exhibit 3, shows that Appellant filed a Motion For An Order To Enjoin The Agency, Department of Health and

Human Services from withholding Agency records and to order the production of any agency records improperly withheld from Plaintiff, on December 14, 1999. The same Civil Docket, 99-CV-2285, shows that U.S. District Court arbitrarily and capriciously failed to grant or deny Plaintiff's 12-14-99 Motion, which denies Appellant 209 pages of his 01-01-88 to 10-22-99 Social Security individual records, denying Appellant due process of law, and violated Appellant's First and Fifth Amendment Constitutional Rights. Fact #12 is the 24th, 25th, 26th and 27th 7TH LEGAL BASIS THAT SUPPORTS MY BELIEF THAT U. S. DISTRICT COURT'S FINAL DECISION, exhibit 1, IS INCORRECT, DUE TO THE Adverse and Direct Impact on Appellant's Social Security Retirement Benefits and Civil Service 5USC5596 backpay (see Plaintiff's Updated Settlement Offer, filed 06-26-98, docket entry number 62, Civil Docket for case # 97-CV-1223) owed by OPM, U.S. Army and U. S. of America for an illegal (5USC8336 (c) (2) and (f)) and fraudulent (18USC1001) 03-31-88 retirement.

m. Fact #13: U. S. District Court Eastern Division of California (Sacramento) Civil Docket for case # 99-CV-2285, docket entry number 22, exhibit 3, shows that Appellant filed a Motion For An Order of Sanction (5USCA551(10) (B) and (e) against Kenneth S. Apfel, Commissioner of Social Security and Defendant for willful, arbitrary and capricious noncompliance with violations of the thirty (30) days time limit provision of 5USCA552 (a) (4) (c), the ten (10) day time limit provision of 5USCA552 (a) (6) (A) (i) and the No Advance payment provision of 5USCA552 (a) (4) (a) (V) with respect to Plaintiff's Freedom of Information Act (FOIA) request, dated October 22, 1999 for the "January 1, 1988 to October 22, 1999 Individual Records of Raymond Jackson 423-42-1287, on February 25, 2000. The same civil docket, 99-CV-2285, exhibit 3, clearly shows that U.S. District Court arbitrarily and capriciously failed to grant or deny Plaintiff's 02-25-00 Motion, which denied Appellant due

process of law, 209 pages of individuals records, 5USCA551 (10) (B) and (E) statutory rights, 5USCA552 (a) (4) (c) statutory rights, 5USCA552 (a) (6) (A) (i) statutory rights, 5USCA552 (a) (4) (A) (V) statutory rights, First Amendment Constitutional right. Fact # 13 is the 28th, 29th, 30th, 31st, 32nd, 33rd and 34th LEGAL BASIS THAT SUPPORTS MY BELIEF THAT U. S. DISTRICT COURT'S FINAL DECISION, exhibit 1, IS INCORRECT, DUE TO THE Adverse and Direct Impact on Appellant's Social Security Retirement Benefits and Civil Service 5USC5596 backpay (see Plaintiff's Updated Settlement Offer, filed 06-26-98, docket entry number 62, Civil Docket for case # 97-CV-1223) owed by OPM, U.S. Army and U. S. of America for an illegal (5USC8336 (c) (2) and (f)) and fraudulent (18USC1001) 03-31-88 retirement.

z1. Fact # 27: The complaint, docket entry 1, lines 144 through 148 for U. S. District Court for the Eastern District of California (Sacramento), Civil Docket case #99-CV-2285, exhibit 3, states that "SSA failed to properly and fairly use Plaintiff's earnings records, Certified Summary of Federal Service (exhibit 4 of the Complaint) and Raymond Jackson's 423-42-1287 Social Security Taxed Earnings 1951 to 1988 (at exhibit 5 of the Complaint) to determine a fair SSA's 1995 initial of Plaintiff's monthly Social Security Retirement Benefits". U.S. District Court failed to provide AN ADEQUATE REMEDY, which is the 55th LEGAL BASIS THAT SUPPORTS MY BELIEF THAT U. S. DISTRICT COURT'S FINAL DECISION, exhibit 1, IS INCORRECT, DUE TO THE Adverse and Direct Impact on Appellant's Social Security Retirement Benefits and Civil Service 5USC5596 backpay (see Plaintiff's Updated Settlement Offer, filed 06-26-98, docket entry number 62, Civil Docket for case # 97-CV-1223) owed by OPM, U.S. Army and U. S. of America for an illegal (5USC8336 (c) (2) and (f) and fraudulent (18USC1001) 03-31-88 retirement. (see complaint, exhibit 3) filed

11-18-99, docket entry 1, exhibit 3, case #99-CV-2285) and the remedies of cases #98-6992/9701223 CV-D-N and case #99-CV-2285 are INADEQUATE.

c. Facts Material to Question III

n. Fact #14: U.S. District Court, Eastern District of California (Sacramento), Civil Docket for Case # 99-CV-2285, docket entry #16, exhibit 3, is a FALSE and FRAUDULENT (18USC1001) docket entry due to it's falsely and fraudulently listing Appellant's "Motion For U. S. District Court's Clerk To Issue Summons In A Civil Action (i.e. A0440 (rev. 10-93)) To Plaintiff For Service On Kenneth S. Apfel, Commissioner of Social Security; Janice R. Lachane, Director, Office of Personnel Management Agency and Louis Caldera, Secretary of the Army," as REQUESTED by Plaintiff for service order to direct Clerk to serve summons, on February 8, 2000. The same civil docket, 99-CV-2285, shows that U.S. District Court arbitrarily and capriciously failed to grant or deny Plaintiff's 02-08-00 Motion, – which denied Appellant inadequate remedy, due process of law, perpetrated fraud upon Appellant, (18USC1001) statutory rights violations perpetrated upon Appellant, violation of First Amendment Constitution rights and Fifth Amendment Constitutional right and obstructed justice. Fact #14 is the 35th, 36th, 37th, and 38th LEGAL BASIS THAT SUPPORTS MY BELIEF THAT U. S. DISTRICT COURT'S FINAL DECISION, exhibit 1, IS INCORRECT, DUE TO THE Adverse and Direct Impact on Appellant's Social Security Retirement Benefits and Civil Service 5USC5596 backpay (see Plaintiff's Updated Settlement Offer, filed 06-26-98, docket entry number 62, Civil Docket for case # 97-CV-1223) owed by OPM, U.S. Army and U. S. of America for an illegal (5USC8336 (c) (2) and (f)) and fraudulent (18USC1001) 03-31-88 retirement.

z. Fact # 26: The docket entries of U. S. District Court for Eastern California (Sacramento) for civil docket case #99-CV-2285, exhibit 3, shows that the statutory duty of U. S. district Court to hold EVIDENTIARY HEARING before acting upon Magistrate's findings of fact and recommendations (i.e., docket entry 29, filed 03-03-00), submitted pursuant to 28USC636 (b) (1) (b). 49ALR FED763), was knowingly, willfully, arbitrarily and capriciously NOT PERFORMED, as statutorily required, which is the 54th LEGAL BASIS THAT SUPPORTS MY BELIEF THAT U. S. DISTRICT COURT'S FINAL DECISION, exhibit 2, IS INCORRECT, DUE TO THE Adverse and Direct Impact on Appellant's Social Security Retirement Benefits and Civil Service 5USC5596 backpay (see Plaintiff's Updated Settlement Offer, filed06-26-98, docket entry number 62, Civil Docket for case # 97-CV-1223) owed by OPM, U.S. Army and U. S. of America for an illegal (5USC8336 (c) (2) and (f) and fraudulent (18USC1001) 03-31-88 retirement. (see complaint, exhibit 3, filed 11-18-99, docket entry 1, exhibit 3) and the remedies of cases #98-6992/97-01223CV-D-N (docket entry 1, lines 45 through 49, complaint, filed 11-18-99, exhibit 3) and case #99-CV-2285 are INADEQUATE.

y. Fact # 25: Docket entry 16, filed 02-08-00, on U. S. District Court of Eastern District of California (Sacramento) Civil Docket for case #99-CV-2285, "Request For Plaintiff For Service Order To Direct Clerk To Serve Summons," is false and fraudulent because it should read "Motion For U. S. District Court's Clerk To Issue Summons In A Civil Action" (i.e. A0440 (rev. 10/93) to Plaintiff for service on Kenneth S. Apfel, Commissioner of Social Security, Janice R. Lachane, Office of Personnel Management Agency and Louis Caldera, Secretary of the Army, which is the 53rd LEGAL BASIS THAT SUPPORTS MY BELIEF THAT U. S. DISTRICT COURT'S FINAL DECISION, exhibit 1, IS INCORRECT, DUE TO THE Adverse and Direct Impact on Appellant's Social Security Retirement Benefits and Civil

Service 5USC5596 backpay (see Plaintiff's Updated Settlement Offer, filed 06-26-98, docket entry number 62, Civil Docket for case # 97-CV-1223) owed by OPM, U.S. Army and U. S. of America for an illegal (5USC8336 (c) (2) and (f) and fraudulent (18USC1001) 03-31-88 retirement.

z4: Fact # 32: The Docket for case #99-CV-2285, exhibit 3, including docket entries #1 through 38, clearly shows that the District Court illegally, knowingly, arbitrarily and capriciously failed to conduct the statutory hearing or trial of the issues in case #99-CV-2285, as stated in Appellant's 11-18-99 Complaint, lines 23 through 157, and as stated in the judgment (i.e. XX-Decision by the Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.), which is clearly AN ABUSE OF DISCRETION, ERRONEOUS, ARBITRARY, CAPRICIOUS, AND UNCONSTITUTIONAL. Fact #32 is the 58th LEGAL BASIS THAT SUPPORTS MY BELIEF THAT U. S. DISTRICT COURT'S FINAL DECISION, exhibit 1, IS INCORRECT, DUE TO THE Adverse and Direct Impact on Appellant's Social Security Retirement Benefits and Civil Service5USC5596 backpay (see Plaintiff's Updated Settlement Offer, filed 06-26-98, docket entry number 62, Civil Docket for case # 97-CV-1223)) owed by OPM, U.S. Army and U. S. of America for an illegal (5USC8336 (c) (2) and (f) and fraudulent (18USC1001) 03-31-88 retirement. (see complaint, exhibit 3) filed 11-18-99, docket entry 1, exhibit 3, case #99-CV-2285) and the remedies of cases #98-6992/9701223 CV-D-N and case #99-CV-2285 are INADEQUATE.

Note 1: Additional Points of Facts Overlooked in the Decision (Appendix B) are at Paragraph IV of plaintiff-appellant's Rehearing Brief/Petition filed 7-10-2001, with the U.S. Court of Appeals for the Ninth Circuit and By reference to are incorporated in this petition.

Note 2: The basis for federal jurisdiction in the court of first instance, United States District Court for the Eastern District of California, is 42 U.S.C. 405 (g).

ARGUMENT

I. Question I: Petitioner is an American citizen and is entitled to not have statutory violations of 5 U.S.C.A. 8336 (c) (2) and OPM Auth. 88-1 perpetrated against petitioner by United States Army and the Office of Personnel Management (OPM) Agency, while petitioner sought a legal remedy. The statutory violation infringed upon petitioner's 1st and 5th Amendments rights.

II. Question II: Petitioner is an American citizen and is entitled to not have statutory violations of 42 U.S.C.A. 405 (g) and 42 U.S.C. 404 (a) (1) (B) perpetrated against him by Social Security Administration, while petitioner sought a legal remedy. The statutory violation infringed upon petitioner's 1st and 5th Amendments rights.

III. Question III: Petitioner is an American citizen and is entitled to not have statutory violations of FRCP 54 (b) perpetrated against him by not having all of petitioner's claims, rights and liabilities against Social Security Administration, United States Army, Office of Personnel Management (OPM) Agency, ADJUDICATED, while petitioner sought a legal remedy, which infringes upon petitioner's 1st and 5th Amendment rights.

REASONS FOR GRANTING THE WRIT

(RULE 14.1 (G) AND rule 10 (a))

I. Compelling Reason I: The Material Facts (i.e. Paragraph I (A)) to question I were not reviewed by the United States District Court for the Eastern District of California because that

Court did not conduct a trial, as documented by the case docket (see Appendix E), which infringed upon petitioner's 1st Amendment Constitutional right (i.e., the right to present grievances to the Government for redress. See Appendix F).

II. Compelling Reason II: The Material facts (i.e., Paragraph I (B)) to Question II were not reviewed by the United States District Court for the Eastern District of California because that Court did not conduct a trial, as documented by the case docket (see Appendix E), which infringed upon petitioner's 1st Amendment Constitutional right (i.e., the right to present grievances to the Government for redress. See Appendix F).

III. Compelling Reason III: The Material Facts (i.e., paragraph I (c) to Question III were not reviewed by the United States District Court for the Eastern District of California because that Court did not conduct a trial, as documented by the case docket (see Appendix E), which infringed upon petitioner's 1st Amendment Constitutional right (i.e., the right to present grievances to the Government for redress. See Appendix F).

IV. Compelling Reason IV: Petitioner's grievances are the three (3) Questions presented for Review. Petitioner is proudly an American. Americans have their grievances reviewed by United States District Courts daily, except Saturday, Sundays and holidays. United States District Court for the Eastern District of California did not review or conduct a trial of petitioner's grievances, as documented by the case docket Appendix E, which infringed upon petitioner's 1st Amendment constitutional right (i.e., the right to present grievances to the Government for redress. See Appendix F) and the 5th Amendment constitutional right (i.e., the right to not be deprived of life, liberty, or property, without due process of law. See Appendix G).

V. Compelling Reason V: There are five (5) parties to this multiple claims and multiple parties case. They are petitioner, Commissioner of Social Security Administration, Secretary of the United States Army, Director of the Office of Personnel Management (OPM) Agency and United States of America. The United States District Court for the Eastern District of California's judgment, Appendix B, is for only one (1) federal party (i.e., former Commissioner of Social Security, Kenneth S. Apfel) and excludes the other three (3) federal parties. Additionally, the judgment does not comply with Rule 54 (b), which requires it to adjudicate all the claims and the rights and liabilities of all the parties. The judgment does not adjudicate all the claims and the rights and liabilities of petitioner, Commissioner of Social Security Administration, Secretary of the United States Army, Director of the Office of Personnel Management (OPM) Agency and United States of America, which infringed upon petitioner's 1st Amendment constitutional right (i.e., the right to petition the Government for redress of grievances. See Appendix F) and 5th Amendment constitutional right (i.e., to not be deprived of life, liberty or property, without due process of law. See Appendix G).

VI. Compelling Reason VI: Petitioner strongly asserts that the statutory violations perpetrated upon him not only infringed upon petitioner's 1st and 5th Amendments rights, but created public policy conflicts within U. S. Court of Appeals and U. S. District Courts.

CONCLUSION

The petition for a writ of certiorari should be granted, with relief for petitioner, as set forth below:

1: Retroactive payment of monthly Social Security Retirement Benefits of $1,100.00 per month, effective March 1, 1996, plus appropriate interest.

2. Retroactively grant reinstatement rights or reemployment rights with United States Army, as an Operations Research Analyst, minimum grade/step: GS-1515-12, step 6, effective April 1, 1988.

3. Retroactively grant all appropriate civil service employment benefits, including Civil Service 5 U.S.C. 5596 backpay.

4. Retroactively grant payment of sanctions for the Arbitrary and Illegal Acts of U.S. Army, Office of Personnel Management (OPM) and Social Security Administration.

5. Any additional relief the Court deems appropriate.

Respectfully submitted,

Raymond Jackson

Date: 11-24-01

APPENDICES

FILED

MAY 31 2001

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RAYMOND JACKSON, Plaintiff-Appellant, v. WILLIAM S. HALTER, Commissioner of the Social Security Administration;* et al., Defendants-Appellees.	No. 00-16815 D.C. No. CV-99-02285-EJG MEMORANDUM**

Appeal from the United States District Court
for the Eastern District of California
Edward J. Garcia, District Judge, Presiding

Submitted May 14, 2001***

Before: PREGERSON, FERNANDEZ, and WARDLAW, Circuit Judges.

---

* William S. Halter is substituted for his predecessor as Commissioner of the Social Security Administration. *See* Fed. R. App. P. 43(c)(2).

** This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by 9th Cir. R. 36-3.

*** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

APPENDIX A

Raymond Jackson appeals pro se the district court's judgment dismissing his action with prejudice for failure to comply with a court order. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review for abuse of discretion the district court's dismissal pursuant to Federal Rule of Civil Procedure 41(b). *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992). We affirm.

Following Jackson's failure to appear for a hearing, the district court issued an order to show cause why he should not be held in contempt, explicitly warned Jackson that failure to appear would result in dismissal, and ensured that the U.S. Marshall personally served a copy of the order to Jackson's home address. Because Jackson failed to appear and because Jackson failed to establish that he was not able to comply with the court order, the district court did not abuse its discretion by dismissing his complaint with prejudice. *See id.* at 1261-63.

Contrary to Jackson's contention, his consent was not required for the district court to designate a magistrate judge to conduct hearings and to submit proposed findings of fact and recommendations for disposition by a district court judge. *See* 28 U.S.C. § 636(b)(1)(B); *Houghton v. Osborne*, 834 F.2d 745, 748 (9th Cir. 1987).

Jackson's remaining contentions are without merit.

AFFIRMED.

A TRUE COPY
CATHY A. CATTERSON
Clerk of Court
ATTEST

SEP - 5 2001

by: Deputy Clerk

FILED
JUL 24 2000
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JUDGMENT IN A CIVIL CASE

RAYMOND JACKSON

v. CASE NUMBER: CIV S-99-2285 EJG PAN PS

KENNETH S APFEL

XX – **Decision by the Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

THAT JUDGMENT IS HEREBY ENTERED IN ACCORDANCE WITH THE COURT'S ORDER OF JUL 24, 2000.

Jack L. Wagner,
Clerk of the Court

ENTERED: July 24, 2000

by: _____
NDDuong, Deputy

35

APPENDIX B

FILED
AUG 28 2001
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RAYMOND JACKSON, Plaintiff-Appellant, v. WILLIAM S. HALTER, Commissioner of the Social Security Administration, et al., Defendants-Appellees.	No. 00-16815 D.C. No. CV-99-02285-EJG Eastern California (Sacramento) ORDER

Before: PREGERSON, FERNANDEZ and WARDLAW, Circuit Judges

Appellant's petition for panel rehearing is denied.

No further filings shall be accepted in this closed docket.

S:\RESEARCH\Pfr.memos\00-16815.wpd

APPENDIX C

FILED
JUL 24 2000
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

CLOSED
DATE: JUL 24 2000

RAYMOND JACKSON,

Plaintiff,

No. CIV. S-99-2285 EJG PAN PS

vs.

KENNETH S. APFEL, Commissioner of Social Security,

ORDER

Defendant.

_____/

This matter is before the court on plaintiff's February 29 motion to stay. The motion was referred to the Honorable Peter A. Nowinski, United States Magistrate Judge, pursuant to 28 U.S.C. 636, et seq., and Local Rule 72-302. On March 3, 2000, Judge Nowinski filed findings and recommendation which were served on all parties and objections were to be filed within ten days after service. Objections to the findings and recommendation were filed

/////

APPENDIX D

The court has reviewed the file and finds the findings and recommendation to be supported by the record and by the magistrate judge's analysis. Accordingly, IT IS HEREBY ORDERED that:

1. The Findings and Recommendation filed March 3, 2000, are adopted in full;

2. Plaintiff's February 29 motion to stay is denied; and

3. This action is dismissed with prejudice.

DATED: 7/20/2000

UNITED STATES DISTRICT JUDGE

Jack2285.jo

ndd

United States District Court
for the
Eastern District of California
July 24, 2000

* * CERTIFICATE OF SERVICE * *

2:99-cv-02285

Jackson

v.

Shalala

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on July 24, 2000, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

Raymond - Jackson
2890 Juniper Street
Fairfield, CA 94533

LCS/EJG

TM/PAN

Edmund F Brennan
United States Attorney
501 I Street
Suite 10-100
Sacramento, CA 95814

Jack L. Wagner, Clerk

BY: _____
Deputy Clerk

U.S. District Court
EASTERN DISTRICT OF CALIFORNIA (Sacramento)

TERMED APPE

CIVIL DOCKET FOR CASE #: 99-CV-2285

Jackson v. Shalala, et al
Assigned to: Judge Edward J Garcia
Referred to: Magistrate Judge Peter A Nowinski
Demand: $0,000
Lead Docket: None
Dkt# in other court: None

Filed: 11/1
Jury demand: Plaintiff
Nature of Suit: 865
Jurisdiction: US Defendant

Cause: 42:405 Review of HHS Decision (SSID)

RAYMOND - JACKSON
plaintiff

Raymond - Jackson
[COR LD NTC] [PRO SE]
2890 Juniper Street
Fairfield, CA 94533
707-422-3171

v.

DONNA E SHALALA, Secretary
Department of Health and Human Services
defendant

Edmund F Brennan
[COR LD NTC]
Yoshinori H T Himel
[COR LD NTC]
United States Attorney
501 I Street
Suite 10-100
Sacramento, CA 95814
916-554-2700

UNITED STATES OF AMERICA
defendant

Edmund F Brennan
(See above)
[COR LD NTC]

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office
ATTEST
Clerk, U. S. District Court
Eastern District of California
By _____ Deputy Clerk
Date 9-26-00

APPENDIX E

Docket as of September 26, 2000 8:36 am

11/18/99	1	COMPLAINT (Pro Se); jury demand, fee status paid, receipt # 195204, assigned to Judge Edward J. Garcia referred to Magistrate Judge John F. Moulds (rw) [Entry date 11/19/99]
11/18/99	2	ORDER setting scheduling conference for 11:00 4/13/00 before Magistrate Judge John F. Moulds (rw) [Entry date 11/19/99]
11/18/99	--	REMARK Summons issued (rw) [Entry date 11/19/99]
11/23/99	3	CLERK'S NOTICE reassigning case from JFM to PAN; Pltf mailed notice and new order re: status (khl) [Entry date 11/23/99]
11/23/99	4	INITIAL ORDER requiring timely service and joint status report by Magistrate Judge Peter A. Nowinski informing the parties on the procedure to follow in pursuing this action (khl) [Entry date 11/23/99]
11/24/99	5	PROOF OF SERVICE by plaintiff Raymond Jackson of summons, order setting status conference, and consent to proceed before the Magistrate (rb) [Entry date 11/29/99]
11/29/99	6	CLERK'S NOTICE regarding Vacating PS sched order and replacing it with Social Security sched order. (khl) [Entry date 11/29/99]
11/29/99	7	SCHEDULING ORDER re Social Security matters before the Honorable Peter A. Nowinski; (khl) [Entry date 11/29/99]
12/14/99	8	MOTION for an order to enjoin the agency, Dept of Health and Human Services from withholding agency records and to order the production of any agencey records improperly withheld from plt by plaintiff Raymond - Jackson (mll) [Entry date 12/15/99]
12/21/99	9	PROOF OF SERVICE by plaintiff of [8-1] (rw) [Entry date 12/22/99]
12/27/99	10	MOTION for joinder of persons needed for just adjudication by plaintiff Raymond - Jackson (mll) [Entry date 12/28/99]
12/29/99	11	MOTION to modify the 11/29/99 scheduling order by pltf Raymond Jackson (rw) [Entry date 12/30/99]
1/11/00	12	CLERK'S NOTICE: Scheduling Order dated 11/29/99 is VACATED [7-1]; and Order Requiring Timely Service and Joint Status Report dated 11/22/99 shall be RESERVED (cc: all counsel) (ljr) [Entry date 01/11/00]
1/11/00	--	RESERVICE of DOCUMENT(S) Order Requiring Timely Service and Joint Status Report [4-1] addressed to plaintiff Raymond - Jackson (ljr) [Entry date 01/11/00]

BEST AVAILABLE COPY

1/13/00	13	PROOF OF SERVICE by plaintiff Raymond - Jackson of [10-1] (mll) [Entry date 01/13/00]
1/19/00	14	RESPONSE by dft CSS to pltf's pending motions [10-1], [8-1 (ljr) [Entry date 01/20/00]
2/8/00	15 ✓	ORDER by Magistrate Judge Peter A. Nowinski ORDERING scheduling conference for 9:00 2/16/00; prepared to address pltf's 3 pending motions (cc: all counsel) (ljr) [Entry date 02/08/00]
2/8/00	16	REQUEST by plaintiff for service order to direct Clerk to serve summons (rw) [Entry date 02/09/00]
2/8/00	17	PROOF OF SERVICE by plaintiff of [16-1] (rw) [Entry date 02/09/00]
2/11/00	18	OPPOSITION by defendant CSS to pltf's motion for issuance of summonses [16-1] (ljr) [Entry date 02/14/00]
2/16/00	19	MINUTES before Magistrate Judge Peter A. Nowinski scheduling conference held on 2/16/00; order setting for status was not served on the parties; matter continued to 2/23/00 at 9:00; docket ckerk to serve the order on the parties and notice this matter set date; C/R Tape 1 of 1 (ljr) [Entry date 02/17/00]
2/18/00	20	CLERK'S NOTICE scheduling conference CONTINUTED for 9:00 2/23/00 before PAN [15-1], [19-1] (cc: all counsel) (ljr) [Entry date 02/18/00]
2/23/00	21	ORDER by Magistrate Judge Peter A. Nowinski ORDERING the USM shall personally serve this order on pltf on or before Monday 2/28/00 [15-1] (cc: all counsel) (ljr) [Entry date 02/23/00]
/25/00	22 ✓	MOTION for sanctions by plaintiff Raymond - Jackson; and against CSS for willful arbitrary and capricious noncompliance w/violation of 30 day time limit provision (ljr) [Entry date 02/28/00]
/28/00	23	MOTION to dismiss by defendant (mll) [Entry date 02/29/00]
/28/00	24	MEMORANDUM OF POINTS AND AUTHORITIES by defendant in support of [23-1] (mll) [Entry date 02/29/00]
/29/00	25 ✓	MOTION to continue until 5/1/00 by pltf Raymond Jackson (rw [Entry date 03/01/00]
/29/00	26	OPPOSITION to pltf's motions for continuance and sanctions [22-1] by dfts (rw) [Entry date 03/01/00]

3/1/00	27	MINUTES before Magistrate Judge Peter A. Nowinski of motio to dismiss by defendant [23-1]; the court will recommend dismissal; status conference held on 3/1/00 (ljr) [Entry date 03/02/00]
3/2/00	28	RETURN OF SERVICE executed by USM as to Raymond Jackson o 2/24/00 (ljr) [Entry date 03/03/00]
3/3/00	29	FINDINGS AND RECOMMENDATIONS by Magistrate Judge Peter A. Nowinski RECOMMENDING that pltf's 2/29/00 motion to stay this action be denied and that the action be dismissed wit prejudice [25-1] REFERRED BACK to Judge Edward J. Garcia (cc: all counsel) (ljr) [Entry date 03/03/00]
3/14/00	30	OBJECTIONS TO FINDINGS AND RECOMMENDATIONS [29-1] by plaintiff Raymond - Jackson (mll) [Entry date 03/15/00]
3/15/00	31	OBJECTIONS TO FINDINGS AND RECOMMENDATIONS [29-1] by plaintiff Raymond - Jackson (ljr) [Entry date 03/16/00]
3/20/00	32	ORDER by Magistrate Judge Peter A. Nowinski ORDERING objections to findings & recommendation [31-1] APPROVED as filed (cc: no notice to parties required) (ljr) [Entry date 03/20/00]
3/27/00	33	RESPONSE by defendant - USA to plts objections to Magistrate Judges F&Rs [30-1] (mll) [Entry date 03/28/00]
7/24/00	34 ✓	ORDER by Judge Edward J. Garcia ORDERING findings & recommendation filed 3/3/00 [29-1] are ADOPTED in full, plt's 2/29/00 motion to stay [25-1] is DENIED, CASE DISMISSED with prejudice (cc: all counsel) (ndd) [Entry date 07/24/00]
7/24/00	35	JUDGMENT entered pursuant to court's order [34-1] (cc: all counsel) (ndd) [Entry date 07/24/00]
9/22/00	36	NOTICE OF APPEAL by plaintiff Raymond - Jackson from District Court decision re judgment [35-1] (fee status not paid) (hk) [Entry date 09/25/00]
9/26/00	37	MAILED case information/docket fee payment notice, copy of Notice of Appeal and appealed 7/24/00 judgment [35-1] to 9th Circuit Court of Appeals, copy of appeal and docket sheet to all parties (hk) [Entry date 09/26/00]
9/26/00	38	CERTIFICATE OF RECORD transmitted to 9th Circuit [36-1] (notice sent) (hk) [Entry date 09/26/00]

Constitution of the United States

Amendment [I.]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Appendix F

Constitution of the United States

Amendment [V.]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in Actual Service of War or public danger; nor shall any person be subject for the same offence to be twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, not be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Appendix G

Federal Rules of Civil Procedure

VII. Judgment

Rule 54. Judgment; Costs

(a) Definition; Form. "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.

(b) Judgment Upon Multiple Claims or Involving Multiple Parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(c) Demand for Judgment. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party is whose favor it is rendered or entitled, even if the party has not demanded such relief in the party's pleadings.

(d) Costs. Except when express provision therefore is made either in a statue of the United States or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs; but costs against the United States, its officers, and agencies shall be imposed

APPENDIX H

on to the extent permitted by law. Costs may be taxed by the clerk on one day's notice. On motion served within 5 days thereafter, the action of the clerk may be reviewed by the court. (as amended Dec 27, 1946, eff, Mar. 19, 1948; Apr. 17, 1961, eff. July 19, 1961; Mar. 2, 1987, eff. Aug. 1, 1987.)

42 U.S.C. 405 (g)

(g) Judicial Review

Any individual, after any final decision of the Commissioner of Social Security made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of such decision or within such further time as the Commissioner of Social Security may allow. Such action shall be brought in the district court of the United States for the judicial district in

which the plaintiff resides, or has his principal place of business, or, if he does not reside or have his principal place of business within any such judicial district, in the United States District Court for the District of Columbia. As part of the Commissioner's answer the Commissioner of Social Security shall file a certified copy of the transcript of the record including the evidence upon which the findings and decision complained of are based. The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing. The findings of the Commissioner of Social Security as to any fact, if supported by substantial evidence, shall be conclusive, and where a claim has been denied by the Commissioner of Social Security or a decision is rendered under subsection (b) of this section which is adverse to an individual who was a party to the hearing before the Commissioner of Social Security, because of a failure of the claimant or such individual to submit proof in conformity with any regulation prescribed under subsection (a) of this section, the court shall review only the question of conformity with such regulations and the validity of such regulations. The court, may, on motion of the Commissioner of Social Security made for good cause shown before the Commissioner files the Commissioner's answer, remand the case to the Commissioner of Social Security for further action by the Commissioner of Social Security, and it may at any time order additional action to be taken before the Commissioner of Social Security, but only upon showing that there is new evidence which is material and that there is a good cause for the failure to incorporate such evidence into the record in a prior proceeding; and the Commissioner of Social Security shall, after the case is remanded, and after hearing such additional evidence if so ordered, modify, or affirm the Commissioner's findings of fact or the Commissioner's decision, or both, and shall file with the court any such additional and modified

findings of fact and decision, and a transcript of the additional record and testimony upon which the Commissioner's action in modifying or affirming was based. Such additional or modified findings of fact and decision shall be reviewable only to the extent provided for review of the original findings of fact and decision. The judgment of the court shall be final in the same manner as a judgment in other civil actions. Any action instituted in accordance with this subsection shall survive notwithstanding any change in the person occupying the office of Commissioner of Social Security or any vacancy in such office.

Appendix J

5 U.S.C. 8336 Immediate Retirement

(a), (b), (c) and (f)

(a) An employee who is separated from the service after becoming 55 years of age and completing 30 years of service is entitled to an annuity.

(b) An employee who is separated from the service after becoming 60 years of age and completing 20 years of service is entitled to an annuity.

(c) (1) An employee who is separated from the service after becoming 50 years of age and completing 20 years of service as a law enforcement officer, firefighter, or nuclear materials courier, or any combination of such service totaling at least 20 years, is entitled to an annuity.

(2) And employee is entitled to an annuity if the employee –

(A) was a law enforcement officer or firefighter employed by the Panama Canal Company or the Canal Zone Government at any time during the period beginning March 31, 1979, and ending September 30, 1979; and

(B) is separated from the service January 1, 2000, after becoming 48 years of age and completing 18 years of service as a law enforcement officer or firefighter, or any combination of such service totaling at least 18 years.

(f) An employee who is separated from the service after becoming 62 years of age and completing 5 years of service is entitled to an annuity.

Appendix L

5 U.S.C. 551 Definitions

5 U.S.C. 551 (10) (B) and (G)

(10) "Sanction" includes the whole or part of an agency –

(B) withholding of relief;

(G) taking other compulsory or restrictive action;

Appendix K
42 U.S.C. 404 (a)

404. Overpayments and Underpayments

(a) Procedure for adjustment or recovery

(1) Whenever the Commissioner of Social Security finds that more or less than the correct payment has been made to any person under this subchapter, proper adjustment or

recovery shall be made, under regulations prescribed by the Commissioner of Social Security, as follows:

(A) With respect to payment to a person of more than the correct amount, the Commissioner of Social Security shall decrease any payment under this subchapter to which such overpaid person is entitled, or shall require such overpaid person or his estate to refund the amount in excess of the correct amount, or shall decrease any payment under this subchapter payable to his estate or to any other person on the basis of the wages and self-employment income on which the basis of the payments to such overpaid person, or shall obtain recovery by means of reduction in tax refunds based on notice to the Secretary of the Treasury as permitted under section 3720A of title 31, or shall apply any combination of the foregoing. A payment made under this subchapter on the basis of an erroneous report of death by the Department of Defense of an individual in the line of duty while he is a member of the uniformed services (as defined in section 410(m) of this title) on active duty (as defined in section 410(*l*) of this title) shall not be considered an incorrect payment for any month prior to the month such Department notifies the Commissioner of Social Security that such individual is alive.

(B) With respect to payment to a person of less than the correct amount, the Commissioner of Social Security shall make payment of the balance due such underpaid person, or, if such person dies before payments are completed or before negotiating one or more checks representing correct payment, disposition of the amount due shall be made in accordance with subsection (d) of this section.

(2) Notwithstanding any other provision of this section, when any payment of more than the correct amount is made to or on behalf of an individual who has died, and such payment-

(A) is made by direct deposit to a financial institution;

(B) is credited by the financial institution to a joint account of the deceased individual and another person, and;

(C) such other person was entitled to a monthly benefit on the basis of the same wages and self-employment income as the deceased individual for the month preceding the month in which the deceased individual dies,

the amount of such payment in excess of the correct amount shall be treated as a payment of more than the correct amount to such other person.

Appendix N

5 CFR Ch. I (1-01-01 Edition) OFFICE OF PERSONNEL MANAGEMENT (OPM)

5CFR 315.401

Subpart D-Career or Career Conditional Employment by Reinstatement

315.401 Reinstatement

(a) *Agency authority.* Subject to part 335 of this chapter and paragraph (b) of this section, an agency may appoint by reinstatement to a competitive service position a person who previously was employed under career or career-conditional appointment (or equivalent).

(b) *Time limit.* There is no time limit on the reinstatement eligibility of a preference eligible or a person who completed the service requirement for career tenure. Except as provided in paragraph (c) of this section, an agency may reinstate a nonpreference eligible who has not completed the service requirement for career tenure within 3 years following the date of separation. This time limit begins to run from the date of separation from the last position in which the person served under a career appointment, career-conditioned appointment, indefinite appointment in lieu of reinstatement, or an appointment under which he or she acquired competitive status.

(c) *Extension of time limit.* Intervening service of the following types extends the 3-year limit on reinstatement of eligibility of a nonpreference eligible who has not completed the service requirement for career tenure:

(1) Employment in Federal competitive service positions under temporary term, indefinite, or other nonpermanent appointment.

(2) Employment in Federal excepted nonappropriated fund, or Senior Executive Service positions in the executive branch;

(3) Employment in the Federal judicial branch or in the executive or judicial branches of the insular possessions of the United States;

(4) Employment in Federal legislative branch;

(5) Employment in an international governmental organization or a territorial, State, county, municipal, or foreign government in a position in which the agency determines that the proposed appointee acquired valuable training and experience for the position to be filled;

(6) A substantially full-time training course in any educational institution of recognized standing when the agency finds that the proposed appointee acquired valuable training or experience for the position to be filled;

(7) Compulsory service on work of national importance under civilian direction as required by the Military Selective Service Act;

(8) Active military duty terminated under honorable conditions;

(9) Service with the District of Columbia Government prior to January 1, 1980. In addition, for an employee on the District Government rolls on December 31, 1979, who was converted on January 1, 1980, to the District of Columbia merit personnel system, continuous District Government service after that date also extends the 3-year period;

(10) Periods of nonemployment during which a person is eligible for injury compensation under the Office of Workers' Compensation Programs;

(11) Periods of nonemployment during which a person receives disability retirement under the Civil Service or Federal Employees Retirement System;

(12) Employment by a nonfederal organization when the person's function was transferred to the nonfederal organization on a contract basis or by law or executive order;

(13) Volunteer service and training required prior to actual enrollment as a volunteer with Peace Corps, VISTA, and other programs of the Corporation for National and Community Service if it begins within the period the person is eligible for reinstatement; and

(14) Periods of overseas residence during which a spouse or unmarried child, under 21 years of age, of a member of the Armed Forces or of a Federal civilian employees is accompanying that individual on official assignment to an overseas post of duty. Overseas posts of duty are duty locations outside the 50 States of the United States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands

[33 FR 12418, Sept. 4, 1968, as amended at 59 FR 68107, Dec. 30, 1994; 60 FR 53504, Oct. 16, 1995]

Appendix I

5 CFR Ch. I (1-01-01 Edition) OFFICE OF PERSONNEL MANAGEMENT (OPM)

5 CFR 351.902 Correction by Agency

When an agency decides that an action under this part was unjustified or unwarranted and restores an individual to the former grade or rate of pay, it shall make the restoration retroactively effective to the date of the improper action.

Appendix Q

5 CFR Ch. I (1-01-01) Edition

5 CFR 352.208 Agency's obligation to reemploy

(a) *Employee's right to reemployment.* An employee is entitled to be reemployed by the reemploying agency as promptly as possible but not more than 30 calendar days after receipt of his application. Except as provided in paragraph (c) of this section, the employee is entitled to reemployment in the occupational field and at the same grade or level and in the same geographical area as the position which the employee last held in that agency. If the reemployment would cause the separation or demotion of another employee, the applicant shall then be considered an employee for the purpose of applying the reduction-in-force regulations (5 CFR part 351) to determine to what, if any, position, he or she is entitled.

(b) *Reemployment in a higher grade.* The reemploying agency may reemploy the employee in a position of higher grade than that to which he is entitled, but not if this reemployment would cause the displacement of another employee.

(c) *Reemployment in SES.* When the employee's right is to a position in the SES, reemployment or return may be to any position in the SES for which the employee is qualified.

(d) *Seniority in postal service.* On reemployment in the postal service, the employee is entitled to the seniority he would have attained had he remained in the postal service.

Appendix M

5 CFR Ch. I (1-01-01 Edition) Office of Personnel Management

5 CFR 352.706 Agency response to reemployment application

(a) Employee's right to reemployment. An employee is entitled to be reemployed by the reemploying agency as promptly as possible, and, in any event, within 45 days after agency receipt of application.

(1) Within the competitive area the employee is entitled to reemployment in:

(i) The position held immediately before leaving the agency;

(ii) One in the same competitive level; or

(iii) Another position for which qualified and eligible at the same grade or level and in the same competitive area as the position the employee last held in the agency. The employing agency determines the position under paragraph (a) (1) (i), (ii), or (iii) of this section to which the employee is entitled. Reduction-in-force procedures shall be applied where necessary in determining the position to which the employee has a right. In applying the reduction-in-force regulations, the applicant shall be considered an employee of the agency.

(2) *Extending the area.* Responsibility for reemploying an applicant is nationwide within the agency. If the applicant is not placed under paragraph (a)(1) of this section, the agency must extend reemployment rights, based on the employee's availability, for assignment outside the competitive area. The employee is entitled to a position, for which qualified and eligible, at the same grade or level as the position last held in the agency. Where necessary, reduction-in-force procedures shall be applied in determining the position to which the employee has a right. The applicant shall be considered an employee for the purpose of applying the reduction-in-force regulations.

(b) *Employee Option.* Before the competitive area is extended under paragraph (a) (2) of this section, an employee who cannot be placed under paragraph (a)(1) of this section, in the competitive area at the same grade or level as the position last held is entitled, if the

employee elects, to reemployment in a position at a lower grade or level identified under the same conditions and procedures as paragraphs (a)(1) of this section.

(c) Agency Option. At any stage in the process, the agency has the option to satisfy the employee's right to reemployment by offering a vacant position which, under reduction-in-force regulations, is in accord with the employee's rights. Also, with the employee's consent, right to reemployment can be met by placement in a vacant position, for which employee is qualified according to agency determination, and available, outside the organizational or geographic area of entitlement, either at the appropriate grade or at a grade other than the one to which entitled.

(d) *Reemployment to an SES position.* When the employee's right is to a position in the SES, reemployment or return may be to any position in the SES for which the employee is qualified. The employee shall be returned at not less that the SES pay level at which the employee was being paid immediately before his or her transfer.

(e) *Basis for agency refusal to reemploy.* An agency may refuse to reemploy when the employee was last separated from tribal employment for serious cause establishing unsuitability for reemployment.

(f) Basis for agency inability to reemploy. An agency may find it is unable to reemploy in the event no position can be found under procedures in this section.

[41 FR 27713, July 6, 1976, as amended at 51 FR 25188, July 11, 1986]

Appendix P